

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

March 12, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: October 30, 2007

Case Number: TSO-0561

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor (the DOE Contractor) and has possessed a DOE access authorization continuously since the mid-1980's. In 1980, 1984, 1991 and 2005, the DOE conducted personnel security interviews (PSI's) with the individual concerning adverse financial information. In an incident report received in August 2006, the individual reported that he filed for Chapter 13 Bankruptcy in May 2006. DOE Hearing Exhibit 18. The DOE conducted an additional PSI with the individual in November 2006. Based on its concerns with the individual's continuing financial problems, the DOE suspended his access authorization.

In August 2007, the Manager of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. The Notification Letter indicates a security concern under Section 710.8(1) (Criterion L) of the regulations governing eligibility for access to classified material. Criterion L concerns information that an individual has engaged in unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy;

or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security.

With respect to Criterion L, the Notification Letter refers to the following derogatory information that raises concerns about the individual's inability to manage his finances:

1. At a 1980 personnel security interview (PSI), the individual stated that he had been late with the payment of some of his debts and, in three or four cases, judgments were filed against him. However, he stated that he foresaw no future financial problems.

2. At a 1984 PSI, the individual acknowledged a financial judgment against him for \$1,200 and indicated that, on occasion, he had been late with his monthly debts. He stated that he never intentionally lives beyond his means, and always paid his debts to the best of his ability.

3. At a 1991 PSI, the individual admitted that in 1989 he was arrested and charged with writing two bad checks for \$25 each. He knew the checks had not cleared prior to closing the accounts. He also admitted that in October 1988, he filed for Chapter 13 Bankruptcy in the amount of \$24,000. He indicated that his financial problems were a result of a change in his pay period structure, lack of overtime, overextending and obtaining easy credit. He indicated that since filing for bankruptcy, he did not have charge accounts or use credit cards. If he saw something he wanted, he saved money and paid cash. He indicated that he did not anticipate financial problems in the future and felt that he had learned his lesson.

4. In 1998, the individual informed the DOE that on November 4, 1997, he filed for bankruptcy in the amount of \$79,080.51. He indicated that it was necessary to file for bankruptcy because of his change in salary, his being unable to work, and not budgeting.

5. At a June 2005 PSI concerning his finances, the individual admitted that he was past due on his mortgage payment. He admitted that he owed \$3,000 on a charged-

off account, the result of a vehicle loan that he co-signed with his wife. She later voluntarily surrendered the vehicle. Furthermore, he admitted that he had an outstanding account in the amount of \$1,049, which was for a security system installed in his home. He admitted that he had gotten behind on his financial obligations as a result of helping his children pay their bills. After he was strongly advised that further financial problems could result in the loss of his DOE security clearance, he stated that he understood the DOE's concerns and the repercussions if he experienced additional financial problems.

6. Despite the assurances provided at the 2005 PSI, at a November 2006 PSI, the individual admitted that, in May 2006, he filed for Chapter 13 Bankruptcy in the amount of \$60,000. He admitted that approximately \$10,000 was credit card debt. He indicated that he filed for bankruptcy because he wanted to have his debt paid off in time for his retirement, which will be in about four years. At the 2006 PSI, he admitted that his 1988 bankruptcy was the result of poor money management and that his 1997 bankruptcy was the result of poor money management and excessive spending.

See Enclosure 1 to August 2007 Notification Letter.

The individual requested a hearing to respond to the security concerns raised in the Notification Letter. In a December 20, 2007, response to the Notification Letter, the individual's counsel admitted that the individual has struggled over time with money management. However, he asserted that the individual intended to demonstrate that the individual's most recent financial difficulties can be attributed to family emergencies and personal ill health that were largely outside of his control, and that he appears likely to favorably resolve his Chapter 13 Bankruptcy. See Individual's Response at 2.

Prior to the hearing, the individual submitted an updated credit report which was reviewed by the DOE security specialist who conducted the individual's November 2006 PSI. She commented that the report indicates that the individual opened three credit accounts between April and June 2006, when he filed for his Chapter 13 Bankruptcy. She stated that this pattern of activity concerns the DOE. She also stated that the credit report indicates that the individual's automobile loan was reaffirmed during the bankruptcy

and is now 120 days late, indicating that he is still having difficulties meeting this financial obligation. January 14, 2008 email of the DOE security specialist.

The hearing was convened in January 2008 (hereinafter the "Hearing"), and the testimony focused on the individual's efforts to demonstrate that he has not acted irresponsibly in the recent past with respect to his family's finances, and that his current financial situation is sufficiently stable to mitigate the DOE's Criterion I concerns.

## II. HEARING TESTIMONY

At the Hearing, I received testimony from four persons. The individual, who was represented by counsel, testified and presented the testimony of his wife, his son, and a senior official at the individual's place of employment.

### A. The Individual

The individual testified that he has been employed by DOE contractors since 1985 and that, since 1999, he has worked in a position that has greatly reduced his opportunities to earn overtime pay. Hearing Transcript (TR) at 112-115.

The individual testified that his 2006 Chapter 13 Bankruptcy resulted from his health problems and his efforts to help his family. TR at 116-117. He stated that in 2005-2006, he was on sick leave for several months due to problems with blood pressure, diabetes and sleep apnea, and that during this period he received no overtime pay and no shift premiums. TR at 117-120.

The individual indicated that for a period in 2004, his daughter and her two children were living in his house, and that he was supporting them. He stated that in March or April 2005, his son and his eight children moved into the house for several months, after his son became unemployed and lost his house. The individual stated that the financial strain of these additional expenses led him to take out short term loans in an unsuccessful effort to avoid bankruptcy. TR at 121-124, 174.

The individual testified that his current Chapter 13 Bankruptcy involves a one hundred percent pay-back to his creditors over four years. He stated that the payments would be finished in June 2010. TR at 125-126. He testified that his car payment is covered by the bankruptcy, but that his wife currently makes payments on her car

using the money that she earns from her part-time job. TR at 136-137. He stated that since June 2006, he has not sought to obtain a credit card or a loan because that is prohibited by the bankruptcy law. TR at 128.

With respect to his current financial condition, the individual testified that his children and his grandchildren currently are living in their own residences, and are supporting themselves. TR at 128-129. He stated that his children continue to come to him when they experience a financial emergency. TR at 176. He stated that he belongs to a fraternal organization with annual fees that total about \$150, and that he intends to save in advance for the travel he undertakes with this organization, rather than continuing his past practice of borrowing money for the trips. TR at 165-166. He stated that his wife will need to have an operation on her arm, and that she has problems with her legs, but that her medical treatment is covered by his insurance. TR at 144-145.

With regard to his monthly expenses, the individual stated that his salary allows him to meet his regular monthly expenses and his bankruptcy payments, but that he has not been able to put aside any savings for emergencies. He stated that his car needs some repairs and that he intends to start putting some money aside for the repairs. He testified that his house requires ongoing roofing repairs and painting, and that he had to put in four new windows last summer. TR at 165-167.

#### *B. The Individual's Wife*

The individual's wife confirmed that their 2006 Chapter 13 Bankruptcy resulted from family obligations and her husband's illness in 2005. TR at 23-26. She testified that she and her husband got in a financial bind because he was not making as much, and they were spending a lot to help their children and grandchildren. TR at 29-30. She stated that in 2005, she and her husband supported her son and his nine children. She stated that until two months ago, her daughter and her three children were again living with them. TR at 28-29. She stated that her son is now self-supporting, and that her daughter receives public assistance because she has been recovering from surgery. Her daughter also receives child support, and earns some income as a telemarketer. TR at 41-43, 47-52.

The individual's wife testified that since October/November 2007, things have been stable financially for her husband and herself. She stated that she is working one day a week, and using the money

for her car payment and as a personal allowance. She stated that she collaborated with her husband and his attorney to draw up the family budget that was submitted in this proceeding. TR at 31-36. She stated that all of their bills are current at this time, but that they have no savings, and that all of the monthly income in excess of budgeted expenses is being used to pay extra bills. TR at 43.

*C. The Individual's Son*

The individual's son testified that he and his nine children lived with his parents in 2005 after he became unemployed and lost his house. He stated that he moved his family back into his own house in 2006. He stated that he currently is meeting his family expenses, but that his job provides no health benefits. He stated that in the last year, his father has given him two or three thousand dollars to pay emergency expenses. TR at 88-103.

*D. The Senior Official at the Individual's Workplace*

The senior official stated that he has worked with the individual for several years, both as a co-worker and as a supervisor. TR at 56-58. He described the individual as an up-front, honest and reliable employee who is diligent in performing his work and has had no disciplinary actions over the years. TR at 58-59. He confirmed that the individual missed two or three months of work due to health problems "a few years ago." He stated that the individual received his full pay during these periods of illness, because pay is reduced only after six months of paid sick leave has been used. TR at 75. He stated that since the individual assumed his current position, his overtime pay has comprised about five to ten percent of his total salary. Tr at 86.

*III. APPLICABLE STANDARDS*

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security

and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing (Case No. VSO-0005)*, 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

#### IV. ANALYSIS

There is a very serious security concern associated with an individual who has engaged in conduct showing a pattern of financial irresponsibility. See *Personnel Security Hearing (Case No. VSO-0073)*, 25 DOE ¶ 82,794 (1996). I find that such a pattern exists in the present case, where it is undisputed that the individual accrued extensive debts that required him to enter Chapter 13 Bankruptcy proceedings in 1988, 1997 and 2006. As discussed below, I find that the individual has not fully resolved the security concerns arising from his current Chapter 13 Bankruptcy, and from his past failures to meet his financial obligations.

I find that the record in this proceeding indicates that the individual has made insufficient progress in managing his finances since his 2006 Chapter 13 Bankruptcy filing. The individual testified that he is less than half way through a four-year repayment program for approximately \$60,000 in debts covered by the bankruptcy. Although he submitted financial statements indicating that he is meeting his current mortgage and utility payments, the DOE security specialist commented in her January 2008 email that the individual's current credit report indicates that he has fallen behind on some car payments. The individual testified that his

wife uses this car and makes the payments on it. However, he is responsible for ensuring that all of the payment accounts appearing on his credit report remain current. Thus, these late payments constitute a continuing concern for the DOE.

Further, at this time, the individual's monthly expenses do not leave him with sufficient funds to pay for significant repair bills, medical bills, or other emergencies that are likely to arise in the future. His wife testified that as of January 2008, they had no savings and were using all of their monthly income to pay bills.

The individual contended at the Hearing that the DOE's concerns about financial irresponsibility should be mitigated by evidence that his 2006 Chapter 13 Bankruptcy resulted from extraordinary financial stresses suffered by the individual and his family in 2004 and 2005. He refers to the recently issued revision of the DOE's Adjudicative Guidelines, which provides that a factor supporting mitigation of security concerns raised by an individual's financial problem is a showing that the problem was caused by conditions such as an unexpected medical emergency that were largely beyond a person's control. 1/

While the individual asserts that his lengthy illnesses in 2005 had a severe impact on his earnings, he has not documented this assertion. The testimony of the senior official at his place of employment indicates that the individual would have received full pay for up to six months of sick leave in 2005. The individual has not shown that he incurred more than six months of leave in that year. The senior official also estimated that the individual currently earns only five to ten percent of his salary through overtime pay. This agrees with the individual's testimony that he has had little opportunity to earn overtime pay since 1999. While the individual may have lost a small amount of overtime pay and shift pay as a result of being absent from the workplace, the

---

1/ The "Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968", were originally published as an appendix to Subpart A of the Part 710 regulations at 66 Fed. Reg. 47061 (September 11, 2001). See Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, Guideline F, Paragraph 20, at <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005).



individual has not demonstrated that reduced earnings due to illness were a significant factor leading to his 2006 Chapter 13 Bankruptcy.

The testimony of the individual, his wife, and his son indicates that the individual provided a substantial amount of financial support to his adult son and daughter and to his grandchildren in 2004, 2005 and 2006. Providing assistance to adult children and their families who are in financial distress, although laudable, is not sufficient in itself to mitigate the DOE's concerns about financial irresponsibility. A showing of family financial emergency must be coupled with other factors supporting mitigation. These other factors include showings that (1) the individual acted responsibly under the circumstances when dealing with the financial emergency; (2) there are clear indications that the individual's financial problem is being resolved or is under control; and (3) the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve his debts. *Adjudicative Guidelines, Guideline F, 20(c), (d) and (e).*

The individual has initiated a good faith effort to repay his debtors. Nevertheless, as discussed above, the individual is less than halfway through a four-year bankruptcy repayment plan that significantly reduces his income for purposes of paying current expenses. While there is some indication that he can meet the basic monthly expenses incurred by himself and his wife, his current credit report indicates that he is behind in paying his car loan. Moreover, he admits that he has no savings to pay for unforeseen expenses and emergencies. He also states that he remains committed to helping his children and grandchildren if they need emergency assistance. I therefore am not convinced that his financial problems currently are under control, and that he will act responsibly in the future. Under these circumstances, I find that he has not met the Adjudicative Guidelines criteria for mitigating a financial problem.

Finally, once there is a long pattern of financial irresponsibility, an individual must demonstrate a sustained, new pattern of financial responsibility sufficient to demonstrate that a recurrence of the past pattern is unlikely. See, e.g., *Personnel Security Hearing (Case No. VSO-0108)*, 26 DOE ¶ 82,764 at 85,699 (1996). In the present case, the individual clearly has a 27-year history of legal difficulties involving finances, including three Chapter 13 Bankruptcies. As discussed above, the individual's current plan to repay his debts through a Chapter 13 Bankruptcy will not be completed until June 2010, and his family budget

indicates that, during this period, he will remain in a precarious financial condition with no savings and little income available to pay emergency expenses. Under these circumstances, I find that the individual has not established a pattern of financial responsibility.

#### V. CONCLUSION

For the reasons set forth above, I find that the individual has not resolved the Criterion L concerns. It is therefore my conclusion that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: March 12, 2008